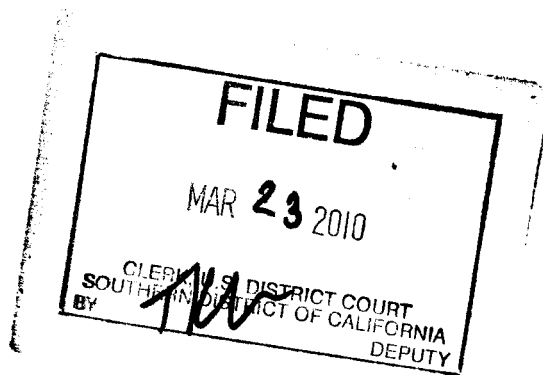


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**UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA**

Heather Rowell,  <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">Law Offices of Robert B. Serian,          "Mr. Harris," Jason "Doe," and          LVNV Funding, LLC,</p> <p style="text-align: center;">Defendants.</p>	<p><b>Case No. 09 CV 1770 JM (RBB)</b></p> <p><b>Second Amended Complaint For          Damages</b></p> <p><b>Jury Trial Demanded</b></p>
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**INTRODUCTION**

1. Heather Rowell, (Plaintiff), through Plaintiff's attorneys, brings this action to challenge the actions of Law Offices of Robert B. Serian, "Mr. Harris," Jason "Doe," and LVNV Funding, LLC, ("Defendants"), with regard to attempts by Defendants to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

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2. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which Plaintiff alleges on personal knowledge.

3. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.

4. Unless otherwise stated, Plaintiff alleges that any violations by Defendants were knowing and intentional, and that Defendants did not maintain procedures reasonably adapted to avoid any such violation.

#### JURISDICTION AND VENUE

5. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

6. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("RFDCPA") and various torts.

7. Because Defendants do business within the State of California, personal jurisdiction is established.

8. Venue is proper pursuant to 28 U.S.C. § 1391.

#### PARTIES

9. Plaintiff is a natural person who resides in the City of Santa Ysabel, County of San Diego, State of California.

10. Defendant Law Offices of Robert B. Serian (Serian) is located in the City of Valencia, the County of Los Angeles, and the State of California.

11. Defendants "Mr. Harris" and Jason "Doe" are located in the state of California. The full legal names of these defendants are unknown to Plaintiff. Plaintiff only knows them as "Mr. Harris" and "Jason."

12. Defendant LVNV Funding, LLC ("LVNV") is located in the state of South Carolina.

- 1 13. Plaintiff is obligated or allegedly obligated to pay a debt, and is a “consumer”  
2 as that term is defined by 15 U.S.C. § 1692a(3).
- 3 14. Defendants are persons who use an instrumentality of interstate commerce or  
4 the mails in a business the principal purpose of which is the collection of  
5 debts, or who regularly collect or attempt to collect, directly or indirectly,  
6 debts owed or due or asserted to be owed or due another and are therefore  
7 debt collectors as that phrase is defined by 15 U.S.C. § 1692a(6).
- 8 15. Plaintiff is a natural person from whom a debt collector sought to collect a  
9 consumer debt which was due and owing or alleged to be due and owing from  
10 Plaintiff, and is a “debtor” as that term is defined by California Civil Code §  
11 1788.2(h).
- 12 16. Defendants, in the ordinary course of business, regularly, on behalf of  
13 themselves, or others, engage in debt collection as that term is defined by  
14 California Civil Code § 1788.2(b), are therefore debt collectors as that term is  
15 defined by California Civil Code § 1788.2(c).
- 16 17. This case involves money, property or their equivalent, due or owing or  
17 alleged to be due or owing from a natural person by reason of a consumer  
18 credit transaction. As such, this action arises out of a consumer debt and  
19 “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

#### 20 FACTUAL ALLEGATIONS

- 21 18. At all times relevant to this matter, Plaintiff was an individual residing within  
22 the State of California.
- 23 19. At all times relevant, Defendants conducted business within the State of  
24 California.
- 25 20. Sometime before December 26, 2007, Plaintiff is alleged to have incurred  
26 certain financial obligations.
- 27  
28

- 1 21. These financial obligations were primarily for personal, family or household  
2 purposes and are therefore a "debt" as that term is defined by 15 U.S.C.  
3 §1692a(5).
- 4 22. These alleged obligations were money, property, or their equivalent, which is  
5 due or owing, or alleged to be due or owing, from a natural person to another  
6 person and are therefore a "debt" as that term is defined by California Civil  
7 Code §1788.2(d), and a "consumer debt" as that term is defined by California  
8 Civil Code §1788.2(f).
- 9 23. Sometime thereafter, but before December 26, 2007, Plaintiff allegedly fell  
10 behind in the payments allegedly owed on the alleged debt. Plaintiff currently  
11 takes no position as to the validity of this alleged debt.
- 12 24. Subsequently, but before December 26, 2007, the alleged debt was assigned,  
13 placed, or otherwise transferred, to Defendant LVNV for collection.
- 14 25. Subsequently, but before December 26, 2007, Defendant LVNV hired  
15 Defendant Serian, a law firm, to collect the debt on behalf of Defendant  
16 LVNV, or the alleged debt was assigned, placed, or otherwise transferred, to  
17 Defendant LVNV for collection.
- 18 26. Defendant LVNV is vicariously liable for the illegal actions of Defendant  
19 Serian while Defendant Serian was engaged in collecting Plaintiff's alleged  
20 debt for Defendant LVNV.
- 21 27. On or about December 26, 2007, Defendant Serian telephoned Plaintiff and  
22 demanded payment of the alleged debt.
- 23 28. This communication to Plaintiff was a "communication" as that term is  
24 defined by 15 U.S.C. § 1692a(2), and an "initial communication" consistent  
25 with 15 U.S.C. § 1692g(a).
- 26 29. This communication was a "debt collection" as Cal. Civ. Code 1788.2(b)  
27 defines that phrase, and an "initial communication" consistent with Cal. Civ.  
28 Code § 1812.700(b).

- 1 30. Subsequently, Plaintiff sent Defendant Serian a letter requesting that  
2 Defendant Serian cease all telephone contact with Plaintiff. In this letter  
3 Plaintiff specifically stated: "Do not call me at home, at work, at my parent's  
4 home, or on my cell phone." Plaintiff sent this letter via certified mail, return  
5 receipt requested, which was received by Defendant Serian's representative,  
6 "M. Anderson."
- 7 31. Defendant Serian continued its attempts to collect the alleged debt by  
8 telephone despite Plaintiff's letter demanding that Defendant Serian cease  
9 telephone contact with Plaintiff.
- 10 32. From approximately December 26, 2007, to August 25, 2008, Defendant  
11 Serian contacted Plaintiff by telephone in excess of one hundred twenty (120)  
12 times. Many of the calls were made by Defendant Serian's representatives,  
13 "Mr. Harris," and "Jason."
- 14 33. Plaintiff became very frightened of Defendant Serian's illegal tactics as  
15 Defendant Serian's representatives, on numerous occasions, threatened to  
16 send people to Plaintiff's home because it "knew where she lived, and knew  
17 people who could remind her of the importance of paying her bills."
- 18 34. One of Defendant Serian's telephone calls was placed to Plaintiff's cellular  
19 telephone at 2:00 AM.
- 20 35. On or about July 24, 2008, Defendant Serian began contacting Plaintiff at her  
21 place of employment, despite her instruction that Defendant Serian cease such  
22 contact.
- 23 36. Defendant Serian also placed several telephone calls and voicemails to  
24 Plaintiff's cellular phone and place of employment without any meaningful  
25 disclosure as to the company name used by Defendant Serian or that  
26 Defendant Serian was a debt collector.
- 27 37. During one of Defendant Serian's telephone calls to Plaintiff, a representative  
28 of Defendant Serian threatened to speak with her employer to "make things

1 hard" for her. Defendant Serian's representative also threatened to ruin  
2 Plaintiff's credit by negatively reporting the alleged debt because "employers  
3 do credit checks now."

4 38. On or about July 28, 2008, Defendant Serian contacted Plaintiff by telephone  
5 at her place of employment, and informed her that it knew her employers, and  
6 had "no problems making [her] check disappear and then [she] would have a  
7 pretty hard time."

8 39. Defendant Serian continued to contact Plaintiff at her place of employment,  
9 eventually speaking with an administrative assistant by posing as a patient  
10 with a complaint. Once transferred to Plaintiff's supervisor, one of Defendant  
11 Serian's representatives discussed Plaintiff's alleged debt with Plaintiff's  
12 supervisor. Plaintiff's supervisors were informed of the incident(s) and  
13 Plaintiff was reprimanded. Plaintiff was also warned that there were be  
14 consequences if Defendant Serian's harassment interfered with her  
15 employment.

16 40. Defendant Serian frequently filled Plaintiff's voicemail box at her place of  
17 employment, requiring her to listen to Defendant Serian's abusive and  
18 harassing telephone messages.

19 41. Defendant Serian's incessant telephone calls to Plaintiff's place of  
20 employment caused Plaintiff's supervisors to inform Defendant Serian that  
21 Plaintiff was not permitted to receive personal calls at work, and demanded  
22 that Defendant Serian cease such telephone calls.

23 42. On August 4, 2008, Defendant Serian contacted Plaintiff by telephone five (5)  
24 times.

25 43. One of Defendant Serian's telephone calls to Plaintiff was picked up by  
26 Plaintiff's minor daughter. Although Plaintiff's daughter informed Defendant  
27 Serian's representative, "Mr. Harris," that she was not Plaintiff, "Mr. Harris"  
28 insisted that she was, and stated, "I am calling to see if you plan on taking

1 care of the lawsuit we served on you today before we start garnishing your  
2 wages.” Plaintiff’s daughter informed Mr. Harris that she did not know who  
3 Defendant was. Defendant replied, “This is Mr. Harris, and you won’t forget  
4 me.”

5 44. Defendant Serian contacted Plaintiff by telephone forty-three (43) times  
6 between July 24, 2008, and August 25, 2008, despite Plaintiff’s demands that  
7 Defendant Serian cease contact by telephone pursuant to her December 26,  
8 2007 letter.

9 45. On several occasions during Defendant Serian’s telephone calls to Plaintiff,  
10 Defendant Serian’s representatives, “Mr. Harris,” and/or “Jason,” informed  
11 Plaintiff that he would “see to it that [she] lose sleep over this,” and that he  
12 would call “anytime of the day and [she] couldn’t prove it [because] the call  
13 was blocked.” Defendant Serian’s representative reiterated the threat to send  
14 people to Plaintiff’s home to “make sure [her] bosses know that [she is] not  
15 worth having there [because she] doesn’t pay her bills.”

16 46. On or about mid-August 2008, Defendant Serian contacted Plaintiff’s mother  
17 in an attempt to collect the alleged debt, thereby disclosing the alleged debt.  
18 Plaintiff’s mother is a third party, as that phrase is anticipated by 15 U.S.C.  
19 §1692c(b).

20 47. On or about August 25, 2008, Defendant Serian, on behalf of Defendant  
21 LVNV, filed a lawsuit against Plaintiff in the Superior Court of California,  
22 County of San Diego, Case No. 37-2008-00057836-CL-CL-NC.

23 48. Due to Plaintiff’s defense of the state action, Defendant Serian requested a  
24 dismissal on behalf of its client, Defendant LVNV, which the court granted on  
25 June 24, 2009.

26 49. Through this conduct, Defendants 1) violated 15 U.S.C. § 1692c(c), by  
27 continuing to contact Plaintiff after being notified in writing to cease and  
28 desist such contact; 2) violated 15 U.S.C. §§ 1692e and 1692e(10) by making



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1 false, deceptive, or misleading representations or means in connection with  
2 the collection of the alleged debt; 3) violated 15 U.S.C. § 1692c(a)(1) by  
3 contacting Plaintiff at a time known to be inconvenient to the consumer  
4 without appropriate consent; 4) violated 15 U.S.C. § 1692d by engaging in  
5 conduct the natural consequence of which was to harass, oppress, or abuse a  
6 person in connection with the collection of a debt; 5) violated 15 U.S.C. §  
7 1692d(1) by threatening use violence or other criminal means to harm the  
8 physical person, reputation, or property of a person; 6) violated 15 U.S.C. §  
9 1692d(6) and Cal. Civ. Code § 1788.11(b) by leaving a message for Plaintiff  
10 without meaningful disclosure; 7) violated 15 U.S.C. § 1692e(5) by  
11 threatening to take action that cannot legally be taken or that is not intended  
12 to be taken; and 8) violated 15 U.S.C. § 1692c(b) by communicating  
13 information related to Plaintiff's alleged debt to a third party without consent.

14 50. Because this conduct violated certain portions of the federal Fair Debt  
15 Collection Practices Act as these portions are incorporated by reference in the  
16 Rosenthal Fair Debt Collection Practices Act, through California Civil Code §  
17 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

18 51. The above described conduct caused Plaintiff actual damages, including but  
19 not limited to, fear of being in her home, a negative impact on her job and  
20 personal relationships, anxiety, embarrassment around friends and family and  
21 other physical and emotional symptoms.



**COUNT I****FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)****15 U.S.C. §§ 1692 ET SEQ.**

52. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

53. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

54. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendants.

**COUNT II****ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (RFDCPA)****CAL. CIV. CODE §§ 1788-1788.32**

55. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

56. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA, including but not limited to each and every one of the above-cited provisions of the RFDCPA, Cal. Civ. Code §§ 1788-1788.32

57. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendants.

**COUNT III**

**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

58. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
59. Defendants acted negligently.
60. Plaintiff suffered severe emotional distress.
61. The conduct of Defendants was a substantial factor in causing Plaintiff this severe emotional distress.

**COUNT IV**

**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

62. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
63. The conduct of Defendants was outrageous.
64. Defendants intended to cause Plaintiff emotional distress or acted with reckless disregard of the probability that Plaintiff would suffer emotional distress while knowing that Plaintiff was present when the conduct occurred.
65. Plaintiff suffered severe emotional distress.
66. The conduct of Defendants was a substantial factor in causing Plaintiff this severe emotional distress.

**COUNT V**

**INVASION OF PRIVACY**

**INTRUSION INTO PRIVATE AFFAIRS**

67. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
68. Plaintiff had a reasonable expectation of privacy while some of the above conduct took place.
69. Defendants intentionally intruded into this expectation of privacy.
70. Defendants intrusion would be highly offensive to a reasonable person.

1 71. Plaintiff was harmed.

2 72. The conduct of Defendants was a substantial factor in causing Plaintiff this  
3 harm.

4 **COUNT VI**

5 **NEGLIGENCE**

6 73. Plaintiff repeats, re-alleges, and incorporates by reference, all other  
7 paragraphs.

8 74. The actions and omissions of Defendants were negligent.

9 75. Plaintiff was harmed, and suffered injury as described above.

10 76. The negligence of Defendants was a substantial factor in causing Plaintiff this  
11 harm and injury.

12 **COUNT VII**

13 **TORT IN SE**

14 77. Plaintiff repeats, re-alleges, and incorporates by reference, all other  
15 paragraphs.

16 78. Defendants violated a statutory duty to another and, consequently, is liable  
17 under the doctrine of Tort-In-Se.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that judgment be entered against Defendants, and Plaintiff be awarded damages from Defendants, as follows:

- An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of actual damages pursuant to California Civil Code § 1788.30(a);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c);
- Special, general, compensatory, and punitive damages.

79. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Date: February 18, 2010

**HYDE & SWIGART**

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